

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(1)

CWP No. 2479 of 2016

Date of Decision : 26.02.2019

Sham Singh and others

...Petitioners

Versus

Punjabi University and another

...Respondents

(2)

CWP No. 6990 of 2016

Ujagar Singh Ahuja and others

...Petitioners

Versus

Punjabi University and another

...Respondents

(3)

CWP No. 8527 of 2016

Sant Kumar and others

...Petitioners

Versus

Punjabi University and another

...Respondents

(4)

CWP No. 16513 of 2016

Gurcharan Singh Sidhu and others

...Petitioners

Versus

Punjabi University and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Singh, Advocate for the petitioners.

Mr. Ajaivir Singh, Advocate for the respondents.

Harsimran Singh Sethi, J.(Oral)

By this common order, four writ petitions bearing CWP Nos. 2479 of 2016, 6990 of 2016, 8527 of 2016 and 16513 of 2016 are being disposed of as common question of law and similar facts have been stated in all the writ petitions.

For the sake of convenience, the facts are being taken from CWP No. 2479 of 2016.

In the present writ petition, the grievance which is being raised by the petitioners is that they are the retired employees of the Punjabi University, Patiala (for short 'University') and as per the approved Statute/Resolution of the University, the retired employees are entitled for the benefit of leave travel concession (for short 'LTC'), which has not been given to them only on the ground that in the year 2006, a proposal was moved to withdraw the said benefit, which proposal is still pending consideration with the Chancellor of the University and as the matter is sub-judice before the Chancellor, the benefit being claimed by the petitioners cannot be extended till the proposed amendments are decided one way or the other by Chancellor of the University.

The facts which have been stated in the present writ petition are that the petitioners, who were the employees of the University, worked on various posts and retired starting from the year 1994 onwards.

As per the averments made in para 5 of the writ petition, under the Punjabi University Act, 1961, the pension scheme came into force w.e.f. 01.04.1990. Paragraph 10 of the Scheme provides that subject to the Statutes and the Rules framed by the Government of Punjab regarding pension scheme, the same are adopted with amendments made from time to

time, insofar as they are not inconsistent with the Statutes of the University.

The paragraph 10 of the scheme is as under :-

“10. Subject to the Statues above the rules framed by the Punjab Government relating to Pension Scheme for their employees including Commuted Pension, Premature Retirement Pension Family Pension etc. alongwith amendments made from time to time be adopted, in so far as the same are not inconsistent with the above statutes.”

As per the pension scheme, which is in force since 1.4.1990, the employees of the University including the retired employees are getting the benefit of LTC on the same pattern as the employees of the Government of Punjab are getting. In the meeting held on 25.03.2006, Syndicate of the University decided to amend the above mentioned paragraph 10 of the Scheme. A Resolution was passed by the Syndicate to the effect that henceforth, in respect of the pension scheme, only those Schemes of the Government of Punjab will be applicable, which are specifically adopted by the University and in respect of the LTC to the retired employees of the University, the same shall cease to have effect from July, 2005. The chart is being reproduced hereunder showing the provision as well as the proposed provision :-

Existing Provision	Proposed Amendment
Subject to the Statutes above the rules framed by the Punjab Government relating to pension scheme for their employees including Commuted Pension, Premature Retirement Pension, Family Pension etc. alongwith amendments made from time to time be adopted, in so far as the same are not inconsistent with the above statutes.	Subject to the Statutes above the rules framed by the Punjab Government relating to Pension Scheme for their employees including Commuted Pension, Premature Retirement Pension, Family Pension etc., alongwith amendments made from time to time will be applicable only if specifically adopted by the Syndicate. However, the payment on account of travelling concession to the University Pensioners shall be deemed to have ceased with effect from July, 2005.

Before an amendment can be carried out, the approval of the

Chancellor is must under Section 16 of the Statutes. The relevant Section 16 is as under :-

“The Making, Amendment, Repeal and Operation of Statues

16.(1) On the commencement of this Act, the Statues of University shall be those set out in the schedule.

**(2) The Syndicate may, from time to time, make new or additional Statutes or may amend or repeal the Statues, and*

**(3) Omitted.*

**(4) Omitted.*

**(5) Omitted.*

(6) Every new Statute or addition to the Statue or any amendment or repeal of Statue shall require the approval of the Chancellor who may sanction, disallow or remit for further consideration.”

Keeping in view the above provision of law, the proposal of the amendment was sent to the Chancellor of the University, which even as on today is stated to be pending consideration with the Chancellor. Subsequent to the meeting held on 25.03.2006, again in the year 2008, the Syndicate passed a fresh Resolution proposing a fresh amendment to Section 10 of the Scheme and in the fresh proposal, withdrawal of the benefit of LTC to the pensioners was deleted. Meaning thereby that the University revised its proposal as done in its meeting held on 25.03.2006, mentioned above. The revised proposal which was approved by the Syndicate is as under :-

Existing Provision	Proposed Amendment
Subject to the Statutes above the rules framed by the Punjab Government relating to pension scheme for their employees including Commuted Pension, Premature Retirement Pension, Family Pension etc. alongwith amendments made from time to time be adopted, in so far as the same are not inconsistent with the above statutes.	Subject to the Statutes above the rules framed by the Punjab Government relating to Pension Scheme for their employees including Commuted Pension, Premature Retirement Pension, Family Pension etc., alongwith amendments made from time to time will be applicable only if specifically adopted by the Syndicate.

That as the proposal of withdrawal of the benefit of LTC to the retirees was withdrawn, the retirees started making request for grant of the said concession. The retirees were not paid the benefit on the ground that the matter has been sent to the Chancellor of the University for appropriate decision, which is pending consideration and till any final decision is taken by the Chancellor in this regard, no benefit can be released to the pensioners in the meantime. As the payments were not being made to the petitioners in respect of the LTC, the present writ petition was filed by the petitioners seeking the said relief.

In the present writ petition, it has been prayed by the petitioners that as of now, para 10 of the Scheme as it was framed on 01.04.1990, is still an operation, according to which, the retirees of the University are entitled for the benefit as being given to their counterpart in the Government of Punjab and, therefore, the benefit of LTC should also be extended to them. In respect of the proposed amendment, a ground has been taken that till the amendment is approved in respect of the meeting held on 25.03.2006, no benefit can be stopped and further, the recommendations made by the Syndicate on 25.03.2006, already stand modified in the year 2008 and, therefore, there was no need to wait for the decision of the Chancellor as in the fresh recommendations, there is no proposal to withdraw the benefit of LTC from the retired employees of the University.

Upon notice of motion, the reply has been filed by the University, wherein it has been admitted by the University that w.e.f. 1.4.1990, all the benefits which are being extended by the Government of Punjab to its employees, are being extended to the employees of the University. In respect of the decision of the Syndicate in the meeting held

on 25.03.2006, it has been mentioned that a proposal was mooted to withdraw the benefit of LTC facility from the retired employees of the University but the same is still pending consideration with the Chancellor for approval before any amendment in that regard could be carried out. In reply, it has further been admitted by the respondent-University that the proposal of the Syndicate dated 25.03.2006 was diluted/modified in the meeting of the Syndicate held on 28.06.2008 and the proposal of withdrawing the benefit of LTC to the University pensioners with effect from July, 2005 was deleted from the recommendations. It has been mentioned that despite repeated requests and reminders, no approval has been received from the Chancellor in respect of the proposed amendment. The relevant portion of the written statement in this regard reads as under:-

“2. That the fact of the matter is that the Hon'ble Chancellor on 03.07.1992 approved the statute of pension scheme and thereafter incorporated by the answering University as Chapter IV in Calendar Volume – I, 1997 and Clause 10 therein reads as under:-

“Subject to the Statutes above the rules framed by the Punjab Government relating to Pension Scheme for their employees including commuted pension, premature retirement pension, family pension etc., alongwith amendment made from time to time be adopted in so far as the same are not inconsistent with the above statutes.”

On the basis of above clause, benefit of travel concession was granted to all the pensioners as per letter dated 31.8.1989 of Punjab Government.

However the Syndicate in its decision dated 25.03.2006 (Annexure R-1/1) sought an amendment to be incorporated in this provision which reads as under:-

“Subject to the Statutes above the rules framed by the

Punjab Government relating to Pension Scheme for their employees including commuted pension, premature retirement pension, family pension etc., alongwith amendment made from time to time will be applicable only if specifically adopted by Syndicate. However, the payment on account of travelling concession to the University pensioners shall be deemed to have ceased with effect from July, 2005.”

However, to have the amendment incorporated in the University statute/Calendar, the approval of the Chancellor is mandatory. However despite communications with the office of the Hon'ble Chancellor, no communication regarding approval was received. Since the University did not receive any communication, the Syndicate in its decision dated 28.06.2008 Annexure R-1/2 recommended to withdraw the proposal of amendment to the statute which was also sent to the Hon'ble Chancellor. However, even upon the recommendation of withdrawal of the amendment, no communication has been received till date from the office of Hon'ble Chancellor. Regarding this, the answering University has written to the office of Hon'ble Chancellor numerous times vide letters as mentioned below:-

- i. Letter no. 5306-5307 dated 25.9.2012*
- ii. Letter no. 134 dated 7.1.2013*
- iii. Letter no. 339-40 dated 17.1.2013*
- iv. Letter no. 2013-14 dated 25.4.2013*
- v. Letter no. 4108-4109 dated 8.8.2013*
- vi. Letter no. 4953-4954 dated 7.10.2013*
- vii. Letter no. 5390-91 dated 12.12.2013*
- viii. Letter no. 8054-55 dated 27.3.2014*
- ix. Letter no. 10199-10200 dated 8.8.2014*
- x. Letter no. 11155-56 dated 20.10.2014*
- xi. Letter no. 12157-12158 dated 26.12.2014*
- xii. Letter no. 1070-71 dated 4.3.2015*
- xiii. Letter no. 2678-79 dated 5.5.2015*

- xiv. Letter no. 4939-40 dated 30.7.2015*
- xv. Letter no. 5438-39 dated 6.11.2015*
- xvi. Letter no. 221-222 dated 22.1.2016*
- xvii. Letter no. 1048-49 dated 25.4.2016*
- xviii. Letter no. 3563-64 dated 19.7.2016*
- xix. Letter no. 4358-59 dated 21.10.2016*
- xx. Letter no. 4990 dated 16.1.2017*
- xxi. Letter no. 5223-5224 dated 3.3.2017*
- xxii. Letter no. 6660-6661 dated 16.5.2017”*

Learned counsel for the respondents states that as the matter amendment to para 10 of the pension scheme is still pending consideration with the Chancellor, no benefit can be allowed to the petitioners in respect of the existing para 10 of the pension scheme.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is an admitted fact that as per the pension scheme applicable as on today, which came into force w.e.f. 1.4.1990, the employees of the University were entitled for the same benefit as being extended by the Government of Punjab to its employees. The Government of Punjab has included the benefit of grant of LTC to the retired employees. It has been admitted by the respondents that as per para 10, which is in operation as of now, the retired employees of the University are also entitled for the benefit of LTC. The said benefit was sought to be withdrawn by the Syndicate of the University by proposing an amendment to the Statute in its meeting held on 25.03.2006 so as to take away the benefit of LTC from the retired employees of the University w.e.f. July, 2005. It is admitted by the respondents that the said proposal of the amendment has not reached finality as there is no approval to the said proposal of the Syndicate by the

competent authority so far.

Once there is no approval of the competent authority for the amendment, the necessary corollary is that para 10 of the Scheme which was framed as on 01.04.1990, continuous to remain in operation and according to same, as per the respondents themselves, the employees of the University are entitled for the benefit of grant of LTC as being extended by the Government of Punjab to its employees. Therefore, once there is no amendment, the denial of the benefit by the University only on the ground that the proposed amendment is pending consideration with the Chancellor for approval does not hold any ground.

Further, the Syndicate in its meeting held on 28.06.2008, which has been appended as Annexure R-1/2 by the University, the amendment to the existing provision has been diluted/modified further. In the amendment as proposed by the Syndicate of the University on 28.06.2008, withdrawal of the LTC to the retired employees of the University has been deleted, meaning thereby that since 2008, the Syndicate was also of the view that the retired employees of the University will be entitled for the LTC as given by the State of Punjab to its employees.

Under these circumstances, as new Resolution was passed on 28.06.2008, there was no need to wait for any approval of the Chancellor in respect of the earlier Resolution passed by the Syndicate on 25.03.2006. The Resolution dated 25.03.2006 stands substituted by the Resolution of the Syndicate dated 28.06.2008 and according to the Resolution dated 28.06.2008, there was no proposal to withdraw the benefit of LTC from the retired employees of the University. Therefore, action of the University in denying the benefit of LTC to the retired employees of the University on the

ground that the matter is pending consideration with the Chancellor is not at all correct and, therefore, denial of the said benefit to the retired employees of the University is contrary to the existing pension scheme, which is in operation since 1.4.1990.

Even otherwise, the benefit to an employee cannot be stopped on the pretext that an amendment to the Rule has been proposed. The amendment to the Rule will only come into effect prospectively. Once, there is no approval by the Chancellor in respect of the proceedings of the Syndicate held on 25.03.2006, it cannot be said that the existing provision of the pension scheme as mentioned in Statute 10 stands amended. It is admitted by the respondents themselves that there is no approval to the proposal of the Syndicate dated 25.03.2006 and even if any approval is given by the Chancellor, the same will be prospective and cannot take away the existing right of the pensioners for the said benefit.

In view of the above, the present writ petitions are allowed. The respondents are directed to consider the case of the petitioner(s) for the grant of LTC benefits to the retired employees of the University as per the Statute 10 of the pension scheme which is in existence since 01.04.1990. Whatever the benefit the employees are entitled for under the said Statute, shall be considered by the competent authority and appropriate orders shall be passed in case of each petitioner in respect of their entitlement about the grant of the said relief. The appropriate order shall be passed by the University computing the benefits of each petitioner for which he/she is entitled for within a period of three months from the receipt of copy of this order. Whatever the monetary benefits for which the petitioners are found entitled for by the University, shall be released to them within a period of

two months thereafter.

The writ petitions stand allowed in above terms.

February 26, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes
Whether reportable? Yes